

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ SEP 18 2012 ★

BROOKLYN OFFICE

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ERWIN JACKSON,

Petitioner,

v.

MEMORANDUM & ORDER
06-CV-0777 (MKB)

ARTHUR LEONARDO, Superintendent of Great
Meadow Correctional Facility,

Respondent.
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MARGO K. BRODIE, United States District Judge:

Petitioner Erwin Jackson brings the above-captioned *pro se* petition pursuant to 28 U.S.C. § 2254, in which he alleges that he is being held in state custody in violation of his federal constitutional rights. Petitioner's claims arise from, *inter alia*, a judgment of conviction after a jury trial in New York Supreme Court, Nassau County, for robbery in the first degree and criminal use of a firearm in the first degree in 1985 and a judgment of conviction after a jury trial in New York Supreme Court, Nassau County for twelve counts of first degree robbery and one count of fourth degree conspiracy in 2005.

The Court referred Plaintiff's petition to Magistrate Judge Tomlinson.¹ By Report and Recommendation dated July 26, 2012, Magistrate Judge Tomlinson recommended that the petition for writ of habeas corpus be denied. (Dkt No. 15.) Judge Tomlinson also recommended that no certificate of appealability issue. (*Id.*) No objections were filed.

¹ The petition was referred by Judge Spatt, who was the assigned District Judge. (Dkt No. 8.) The case was subsequently reassigned to the undersigned.

A district court reviewing a magistrate judge's recommended ruling "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "Failure to object to a magistrate judge's report and recommendation within the prescribed time limit 'may operate as a waiver of any further judicial review of the decision, as long as the parties receive clear notice of the consequences of their failure to object.'" *Sepe v. New York State Ins. Fund*, 466 F. App'x 49, 50 (2d Cir. 2012) (quoting *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir.1997)).

This Court has reviewed the unopposed R&R, and, finding no clear error, the Court adopts Magistrate Judge Tomlinson's Report and Recommendation in its entirety pursuant to 28 U.S.C. § 636(b)(1). The petition for habeas corpus is denied and the Court will not issue a certificate of appealability. *See* 28 U.S.C. § 2253. It is further certified pursuant to 28 U.S.C. § 1915(a) that any appeal would not be taken in good faith. *Coppedge v. United States*, 369 U.S. 438 (1962). The Clerk of Court is directed to close the case.

SO ORDERED.

Dated: September 18, 2012
Brooklyn, New York

S/Judge Brodie


MARGO K. BRODIE
United States District Judge